

**MINUTES
HAMPTON ZONING BOARD OF ADJUSTMENT
THURSDAY, August 18, 2005**

MEMBERS PRESENT: Robert V. Lessard, Chairman
Tom McGuirk
Jack Lessard (sitting in for Bill O'Brien)
Rev. Henry Stonie (sitting in for Jennifer Truesdale)
Matt Shaw

OTHERS PRESENT: Kevin Schultz, Building Inspector
Shirley Doheny, Recording Secretary

Chairman Lessard stated the format for the meeting. He then introduced the Board. Chairman Lessard made a motion to send a letter signed by the Board members, Alternates, Building Inspector and Secretary to Michael Kennedy thanking him for his service on the Board. Second Rev. Stonie. Motion passed 5-0. Motion by Jack Lessard seconded to make Bill O'Brien the Clerk.

41-05 The petition of Fairview Nominee Trust, through option holder Parallel Robotic Systems Corp., for property located at 8 Merrill Drive seeking relief from Art. 3 to add the sale of beer and wine to a facility previously approved by the ZBA which authorized it to operate a (retail) interactive theater, where video games can be played on the internet, or with other persons in the facility via a Local Area Network (LAN). The Condo association (abutter) is concerned that once approval of the sale of liquor (to be consumed on the premises) is granted, that in later years there could be excessive noise. We propose an annual renewal of the approval by the ZBA so that the Condo owners can block the renewal if the disturbances are excessive. This property is located at Map 142, Lot 5 in an I zone.

Michael Fortier of Parallel Robotics came forward. He made a presentation showing drawings of the proposed Pub. They have people from ages 10 to 50 approximately. Their hope is to increase business. One of the issues with this space was finding bathroom access to it. By combining with the interactive theater, the people could use the bathrooms. They are doing a national roll out of this facility and they would like to see if having a pub would bring up the numbers in a couple of their demographics. They propose trying it for a year. Chairman Lessard asked if he was present for the original petition. Mr. Lessard stated that the Board had said there would be no beer or alcohol. He also stated that he had called and did not receive a call back. Chairman Lessard asked Rev. Stonie to read a letter addressed to the Board from Adhesive Tech dated August 8, 2005. The letter expressed their opposition to this petition.

Questions from the Board

None

Comments from the audience

Jim McLaughlin of 44 Drakes Landing representing 53 families of the Riverwalk Condos came forward. He had opposed the original application. The original petition was granted with the stipulation that there would be no beer or wine. He expressed his concern regarding parents having a drink while waiting for their child then driving them home. He stated that they were just looking for peace and tranquility and asked the request be denied.

Back to board

Tom McGuirk expressed concerns about safety. Introducing alcohol would introduce problems. He doesn't think that mixing alcohol in a place that caters to children is a good thing. They would

have to increase police activity. Mr. McGuirk expressed concern about people coming in to watch a football game and having drinks and then possibly going to the gaming room. Michelle, who obtained the acceptance to put the Pub in, asked to speak. She said that the objective was to give the parents a place to wait while their children were playing games. She stated that there would also be food. She understands the need for trained bartenders and servers who would be trained to recognize anyone having too much to drink. Tom McGuirk asked how the bartenders would be trained. He expressed concern about adults having a few drinks and then going to play games in the same vicinity as children. He is also concerned about a need for added Police presence. Kevin Schultz stated that he understands that a use change was obtained from Planning Board. Kevin stated that the problem was a need for bathrooms. If Holidek did not own the pub, they would have to provide their own bathrooms. A restaurant is allowed in that area, but they need bathrooms. Matt Shaw questioned how they could go and obtain a liquor license when the original petition was granted with the stipulation that there be no alcohol. Mr. Schultz stated that it was a separate entity (Michelle) that went before the Planning Board. Vic Lessard asked if the purpose was to build up their business. Matt Shaw stated that in order to build up their business in the older than 20 crowds they would need alcohol. Jack Lessard can't see having liquor in that area. The Board had previously stated there would be no alcohol. Rev. Stonie confirmed that the initiation of the no alcohol was by the Board. He also asked what has changed regarding hardship since September to require a variance. The applicant stated that the business has been successful and this is an opportunity to utilize full potential of their business. He also stated that there is a no language policy, parents decide what level of games children are allowed to play and it is a very nice atmosphere. Vic Lessard stated that he had asked a Planning Board member if they were aware that the ZBA had said there would be no alcohol allowed on the premises. He understood they were not aware. Tom McGuirk expressed concern that it is an experiment. Vic Lessard questioned whether the condo documents allowed alcohol. Kevin Schultz wanted to make clear for the abutters and other businesses writing letters that this is an acceptable use. They are back because the last variance stated if something changes they would have to come back. Vic Lessard stated that a variance is granted to the premise not to the person and therefore could not revoke it in a year. Matt Shaw asked about food. Michelle stated that it is very basic menu. Vic Lessard stated that he had many calls against the business originally and he went along because there would be no alcohol. Vic Lessard doesn't think liquor would be a good thing especially with children. Matt Shaw stated that having a restaurant and alcohol could be a problem down the road. Not everyone would run the business the same way and the variance would go with the property. Jack Lessard motioned to deny; Tom McGuirk seconded the motion.

VOTE: 5-0

PETITION DENIED

42-05 The petition of Oddfellows Property Holdings, LLC, through option holder Drakes Appleton Corporation, for property located at 428 Lafayette Road seeking relief from Articles 4.1.1, 4.5.2, 4.7, 4.3, 6.3.1, 6.3.3, 8.2.1, 8.2.2, 8.2.3, 8.2.4, 8.2.5 and 8.2.6 to allow mixed use of property; namely 12 one bedroom residential units and 3,350 sq. ft. of office space. This property is located at Map 160, Lot 17 in a B zone.

Vic Lessard stepped down on this petition. Matt Shaw chaired this Petition. Michael Donahue and Tom Nigrelli came forward. Atty Donahue referenced two earlier petitions. The second petition was for a rooming house use and received relief for the width of the lot. Mr. Nigrelli showed a rendering of proposed building. The building would include office space on the first floor and three floors each with four one-bedroom condos. There will be an elevator. This proposal has a smaller footprint than the prior two. There are two different issues to be discussed. One is a small variance for the office component in terms of parking and a different variance for the residential component. He stated that the zoning doesn't differentiate whether the units are one, two or three bedrooms; two parking spaces are required. The rooming house that has been approved consists of twelve large rooms with refrigerators and a walk in closet. The zoning

requires 13 spaces. He questioned the difference between a bedroom and a sleeping room. Anyone buying a unit understands they have one parking space. Both abutters don't like the idea of rooming house but they do like the idea of 12 condo units in the downtown area. Twenty-eight parking spaces proposed are owned by someone, office space will have their own. The office use requires 17 spaces. The plan provides 15 spaces. An unusual aspect is that the boundary line for this property is in Lafayette Road. In front of building there are six diagonal spaces. If they claimed those spaces and made 3 parallel spaces they could make this proposal work. It is not their intention to do that. They would prefer to grant a permanent easement to the Town. He believes this is good for downtown Hampton. Atty Donahue stated that they are before the Board for an area variance. Under those standards they are not required to show hardship to the same degree. Atty Donahue presented a document provided by Atty Saari that was a plan with a note that confirms that there is no deeded public easement relating to three spaces. This proposal is for a 9 to 5 office and after that it is a residential facility. At night there would be 15 additional spaces available to them. Atty Donahue went through the criteria as presented in the petition. They believe that the rendering speaks for itself, and the applicant's reputation speaks for itself. There is a significant public interest in using the land properly in the Town center. There is an approved plan and it is believed that this plan is better in terms of public interest. This is a preexisting lot. It has previously been approved for a 12-bedroom rooming house, which they believe is, in effect, the equivalent of the use being proposed as far as the residential component. Both uses are permitted uses. They need relief because of the width of the lot to make a reasonable use of the property. This is an elevator unit and therefore must spread the cost over the units that will bring in business for the downtown. This will bring more revenue to the Town. The adjacent property owners believe this is a reasonable use for this property in this area the Town allows business and residential together. This proposal is complementary to zoning.

Matt Shaw read a letter from the Office of the Town Manager signed by the Board of Selectmen, stating their opposition to the variance because of the parking issue. He also read a letter from Pairpoint Group, LLC expressing their support.

Questions from the Board

Tom McGuirk asked if they were to change use would they have to go before Planning Board. It is agreed that they would. If the use was changed and the use required a variance for parking they would have to come back to the Zoning Board. Jack Lessard thinks it is a good idea. He believes there is a need for one-bedroom units. Mr. Nigrelli thinks this is a good fit for this project. Rev. Stonie referenced the rendering and asked the height of the building. It is 46.10 feet as proposed. The office space is 3350 square feet. The 12 units are approximately 850 square feet. Kevin asked if they are allocating 15 parking spaces for the business. Atty Donahue stated that yes; the condo documents will state a parking space goes with each unit.

Rosanna Wright of 5 Epping Ave came forward and thinks it is a good idea. She asked about prices. Mr. Nigrelli stated that the prices would start at approximately \$199,000. Vic Lessard came forward to speak about project. He stated that a representative from the tax office told him that this condo project would bring in more money for the Town. He agrees that uptown does need more parking.

Comments from the audience

None

Back to Board

Tom McGuirk agrees that the zoning ordinance is outdated considering it doesn't consider that the units are one bedroom. He also stated he believes the Board of Selectmen flip-flops regarding parking. He is in favor. Rev Stonie discussed the lack of parking downtown. He stated presently it is a can of worms to park in the municipal lot. He believes it would be asking for trouble in an

already impacted area. Tom McGuirk doesn't see the impact on the outside of this lot. If anything they could negatively impact the Town. Mr. Stonie stated this proposal doesn't fit with Master Plan. Jack Lessard thinks it is a good plan. He thinks it is a nice building. He thinks it is good for the Town. Matt Shaw thinks it is better than a 12-unit rooming house. He believes part of the problem with parking in Town is the parking lot itself. It is dumpy. The only way he could vote for this would be that the parking spaces remain angle parking. Jack Lessard motioned to grant the petition only if the spaces will be kept angle spaces in perpetuity for public use. Tom McGuirk seconded. Matt polled the Board to see if they agreed with the five criteria

VOTE: 3-1

PETITION GRANTED

Five minute break

43-05 The petition of William & Diane Delaney for property located at 17 Whitten Street, Unit 6 seeking relief from Articles 1.3 and 8.2.3 to raze and remove existing single story cottage and replace with a new two-story year round cottage with balcony. The new cottage will be in the same footprint as the existing cottage with the exception of the second floor balcony. This property is located at Map 295, Lot 41 in a BS zone.

Steve Ells and William Delaney came forward. This is a 7 unit cottage condos. They are proposing to build on existing footprint with the exception of the balcony. The condo association will authorize this renovation if granted by this Board. These are seasonal cottages. Vic Lessard asked if it would continue to be a seasonal unit. Vic Lessard questioned whether they have to get a variance to make the unit year-round. Vic Lessard believes they would have to go to Planning Board for site review. Atty Ells went through the five criteria as presented in the petition. They are asking for an area variance. Occupancy and parking stays the same. He referenced other projects that have done this same thing and has worked well.

Questions from the Board

No

Comments from the audience

No

Back to Board

Rev Stonie doesn't think bad repair is an argument for a variance. These cottages can be valuable. Photos show it is so close and a second story would block sunlight of surrounding buildings. This would bring more density. Jack Lessard has seen them. He thinks they need a lot of work. Tom McGuirk likes the proposal. He thinks if all cottages did the same it would make it more attractive condo project. Mr. Delaney stated that there had been a meeting of the Condo Association and they agreed on one plan. Mr. McGuirk thinks they would be safer. Matt Shaw asked about the siding. It would be a composite material. Kevin Schultz asked the question if a project was granted a variance many years ago could a later proposal override. Vic Lessard doesn't think this Board can say it is ok to go to year round. Kevin Schultz referenced variances that were previously granted. He wonders about those variances, if they were given for seasonal only. Atty Ells referenced minutes from a prior meeting. They did indicate for seasonal use only. Atty Ells also indicated that he was under the impression that because we now have certificates of occupancy that this would trump where they started. If a variance is required to remove or undo a variance that a prior Board made then it would require another meeting. Vic Lessard doesn't want to grant permission to go year-round. Kevin Schultz believes that the letter of assent from the association would be sufficient.

Catherine Lackey owns Unit 1 of the same condo. She asked if all seven would be granted a variance to go year round or just one. Atty Ells would anticipate having to amend the Docs if they are successful here and before the Planning Board. Rev. Stonie thinks another month to come up with a meeting of the minds might be suggested. Kevin Schultz suggests that the Board could approve what is proposed tonight still under a seasonal use basis if during that time the Condo Association petitioned this Board to be able to use the property in a year round capacity provided the units meet the code requirements. Rev. Stonie included that the Condo docs must allow the Association to come back to ask for this. Jack Lessard motioned to grant the petition with exception of year round occupancy. Petitioner needs to come back to obtain year round occupancy. Tom McGuirk seconded the motion. Vic Lessard polled the Board regarding the 5 criteria. The Board agreed.

VOTE: 5-0

PETITION Granted

44-05 The petition of Craig & Lynn Mullen for property located at 17 Whitten Street, Unit 5 seeking relief from Articles 1.3 and 8.2.3 to raze and remove existing single story cottage and replace with a new two-story year round cottage with balcony. The new cottage will be in the same footprint as the existing cottage with the exception of the second floor balcony. This property is located at Map 295, Lot 41 in a BS zone.

Steve Ells and Craig Mullen came forward. Atty Ells went through the criteria as presented in the petition. The variance requested is the same as prior petition.

Questions from the Board

None

Comments from the audience

None

Back to Board

Matt Shaw motioned to approve subject to seasonal use for now. Jack Lessard seconded. Vic Lessard polled the Board regarding the five criteria

VOTE: 5-0

PETITION GRANTED

45-05 The petition of Stephen Holmes for property located at 8 Jenness Road seeking relief from Articles 1.3 and 4.5.1 to construct addition within front setback. This property is located at Map 179, Lot 65 in RA zone.

Steve and Caroline Holmes came forward. Steve went through the five criteria as presented in petition. Because of the position of the existing structure a variance is needed from front set back. Moving the dwelling is not an option. Matt Shaw stated that if the house were straight on the left corner they would probably make it.

Questions from the Board

No

Comments from the audience

No

Back to Board

Vic Lessard stated that he received a call in favor by a neighbor. Matt Shaw motioned to approve. Tom McGuirk seconded. Chairman Lessard polled the Board regarding the five criteria. Rev. Stonie stated that this proposal would put this house in sync with other types of houses in the neighborhood.

VOTE: 5-0

PETITION GRANTED

46-05 The petition of Albert & Mary Caswell for property located at 36 Seaview Avenue seeking relief from Articles 1.3, 4.5.1 and 4.5.2 to replace an existing house and shed in kind where the setbacks will remain about the same, but do not conform to the side and front setback requirements. This property is located at Map 133, Lot 34 in a RA zone.

Peter Saari representing the Caswells came forward. This is an older small house. The overall footprint is 920 sq. feet. The side set back is necessary for the stairs. Atty Saari went through the criteria as stated in the petition.

Questions from the Board

Henry Stonie asked if the shed would be torn down. Atty Saari indicated that it would be replaced. Vic Lessard read two letters from neighbors in favor of the petition.

Comments from the audience

None

Back to Board

Jack Lessard motioned to grant the motion, Tom McGuirk seconded. Chairman Lessard polled the Board regarding the five criteria.

VOTE: 5-0

PETITION: Granted

47-05 The petition of Paul W. Hobbs 1989 Trust, Piscataqua Savings Bank, Trustee, for properties located at 67 and 71 Mooring Drive seeking relief from Articles 1.3 (as to 4.1, 4.1.1, 4.2, 4.3 and 4.5.2) to shift the lot line between the two properties 6.45 feet at the front and 7.27 feet at the rear to eliminate the current line which passes through a structure on one of the lots. These properties are located at Map 289, Lots 39 and 40 in a RB zone.

Atty. Saari and Ernie Cote came forward. When these were leased land where the lot lines were didn't matter as much. These lots are now being sold and this lot came across as an encroachment. The idea is to get reasonable set backs for the zone. The lots are not exactly the same. They are trying to fix an existing problem.

Questions from the Board

Henry Stonie asked if the title was clear on both properties.

Comments from the audience

No

Back to Board

Jack Lessard motioned to grant. Henry Stonie seconded. Chairman Lessard polled the Board regarding the five criteria.

VOTE: 5-0

PETITION granted

48-05 The petition of Golden Corridor, LLC for properties located at 5 and 5A Ocean Boulevard seeking relief from Articles 4.4, 8.2.1, 8.2.3 and 8.2.6 to remove the existing dwellings, combine the two lots and construct a Quad-plex with parking under and 3 ½ floors above, requiring multi-family setback/buffer recreation area and height from average grade level relief. These properties are located at Map 298, Lot 1 and Map 295, Lot 66 in a BS zone.

Peter Saari came forward. He stated there are two lots, 5 and 5A. 5A being the bigger. Plan to tear down what is there and replace with what is proposed. The back part of lot 5 is dedicated to a large drainage area, which means there is no access from back without going through drainage area. The land slopes from front to back. The proposal is to come from existing harbor project. There would be one access rather than multiple accesses. Recreation area variance and height set backs variances are required. Atty Saari stated four units are allowed. The height variance is only needed because of slope. Atty Saari continued through the criteria as presented in the application. There is no other way to accomplish this. There are more condos as time goes on. This will be consistent with typical mixed use in this area.

Questions from the Board

None

Comments from the audience

Linda Gephardt of 4 Bailey Ave. came forward. She presented pictures to put this in context. She stated the local construction has been an inconvenience the last two years. It has blocked other peoples view. She stated the NH DES has been called out twice regarding fill that they did not have to do. Abutters have always experienced high tide flooding because of extra fill. The drainage wells concern her with respect to additional flooding. She asks that they be held accountable. The dust is a problem. She believes she has experienced an unhealthy air situation. She believes this quad-plex is not in keeping with the area. She doesn't believe it is in keeping with Master Plan. She also expressed concern about run off from this building. She is concerned that if system fails, everyone will flood. She also questioned how they will get across drainage well. The other issue is that there is no staging area left. Ask Board to not allow old access road to be blocked. She asks that ZBA not grant these variances. This is not the only building that can be built on this lot. She stated that the developers created their own hardship. She presented a copy of her letter to the Building Inspector. She opposes the size of the building. Vic Lessard asked about dust control. Mark Maynard stated that Thibeault is owner and contractor and that today the road was hand swept. Ms. Gephardt stated there was no water truck. John Kavanagh of 14 Duston Ave came forward. He spoke about the dust control about a year ago. He doesn't believe the owner is interested in doing anything that should be done properly. He stated that they put in a pool without a permit; pool was filled with water, with a plastic snow fence around it with hose from a water line on Harbor Road with no meter. Problem with sand put on Beach. DES was down there because they were filling underneath the building without the

necessary permits. He objects because the proposed swale for drainage in phase two. Any hardship they claim now is of their own making. The height of the building does not fit in with buildings in this area. He asks the Board to oppose.

Mark Maynard of 5 Ocean Boulevard came forward. He has an \$800 water bill. DES met with him they found nothing on Ms. Gephardt's property. The easement was not in their original proposal. It is there because the area flooded. There was always flooding. Now there is no flooding. The drainage property has been solved. They never put a pool or pier in illegally. They did not fill without a permit. Kevin Schultz stated that permits were pulled but not in the appropriate order.

Rosanna Wright of Epping Ave expressed concern about a new Bridge going in.

Violette Dubois lives across from buildings going up. Concerned that building is too big for area. Height is a problem. Peter Saari said there are two issues. The building is a foot and one half higher than it should be. The other issue is density. Each unit is 3117 square feet. The lot is 12,000 plus square feet.

Back to Board

Henry Stonie referenced 4.2. Atty Saari stated that they measure the average grade. In 8.2.1 is there any recreation dedicated space. Rev. Stonie asked about 8.2.3. The distances meet the BS zone set backs not the multi family set backs. Regarding 8.2.6 what are the buffers. Atty Saari stated 4.05 to 12.82 at farthest point. Matt Shaw asked about sealed area. Matt Shaw asked about making it smaller. Atty Saari doesn't understand the height concern. Matt Shaw asked about making it smaller, maybe one less story. Atty. Saari suggested losing one story. Jack Lessard motioned to deny on grounds that it is too big. Henry Stonie seconded referring to Master Plan it doesn't fit the scale of the surrounding community and it doesn't meet criteria regarding hardship

VOTE: 5-0

PETITION DENIED

Public session ended 11:15. Henry Stonie motioned to adjourn, Jack Lessard seconded Vote was 5-0.

BUSINESS SESSION

Kevin Schultz gave 2005 Zoning books to members. He mentioned a petition on Huckleberry scheduled for next month. It is a lot of record. The owner is building already. She did the right things in our ordinances; there was some confusion in Article 4, Table RA zone. In the process of review, Kevin noticed the footnote. They will be coming before this Board.

Meeting adjourned.

Respectfully submitted,

Shirley Doheny
Recording Secretary